REMARKS

The Office Action dated February 2, 2010, has been received and carefully considered. In this response, the claims 1, 37, and 38 have been amended and claims 5 and 6 have been cancelled without prejudice or disclaimer. No new matter has been added. Entry of the amendments to claims 1, 37, and 38 and the cancellation of claims 5 and 6 without prejudice or disclaimer is respectfully requested. Reconsideration of the pending rejections in the present application is also respectfully requested based on the following remarks.[1]

I. THE ALLOWABILITY OF CLAIMS 5 and 6

Applicant notes with appreciation the indication on page 12 of the Office Action that claims 5 and 6 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 1, 37, and 38 have been amended to substantially incorporate the

[1] As Applicant's remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicant's silence as to assertions made by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., assertions regarding dependent claims, whether a reference constitutes prior art, whether references are legally combinable for obviousness purposes) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such in the future.

limitations of claims 5 and 6, and thus should now be allowable. Acknowledgment of same is respectfully requested.

II. THE ANTICIPATION REJECTION OF CLAIMS 1-4, 18, 37, AND 38

On pages 2-5 of the Office Action, claims 1-4, 18, 37, and 38 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,357,008 to Nachenberg ("Nachenberg"). This rejection is hereby respectfully traversed.

Under 35 U.S.C. § 102, the Patent Office bears the burden of presenting at least a prima facie case of anticipation. In re King, 801 F.2d 1324, 1326 (Fed. Cir. 1986). Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. Celeritas Tech., Ltd., v. Rockwell Int'l Corp., 150 F.3d 1354, 1361 (Fed. Cir. 1998). The prior art reference must disclose all of the claim elements arranged or combined in the same way as recited in the claim. Net MoneyIN, Inc. v. VeriSign, Inc., 545 F.3d 1359, 1369 (Fed. Cir. 2008). "In addition, the prior art reference must be enabling." Akzo N.V. v. U.S. International Trade Commission, 808 F.2d 1471, 1479 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987). That is, the prior art reference must sufficiently describe the claimed invention so as to have placed the public in possession of it.

In re Donohue, 766 F.2d 531, 533 (Fed. Cir. 1985). Such possession is effected only if one of ordinary skill in the art could have combined the disclosure in the prior art reference with his/her own knowledge to make the claimed invention. Id..

Applicant has amended claims 1, 37, and 38 to incorporate the limitations of claims 5 and 6. The Examiner has indicated that claims 5 and 6 would be allowable if rewritten in independent format, including any intervening claims. See Office Action, page 12. Accordingly, Applicant respectfully submits that aforementioned anticipation rejection of claims 1-4, 18, 37, and 38 is now moot.

In view of the foregoing, Applicant respectfully requests that the aforementioned anticipation rejection of claims 1-4, 18, 37, and 38 be withdrawn.

III. THE OBVIOUSNESS REJECTION OF CLAIMS 7, 8-11, 12-17, AND 29-36

On pages 5-11 of the Office Action, claims 7, 8, 10, 12-17, and 29-34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Nachenberg in view of U.S. Patent Application Publication No. 2004/0143749 to Tajalli *et al.* ("Tajalli"). On pages 11-12 of the Office Action, claims 9, 11, 35, and 36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nachenberg in view of U.S. Patent Application

Publication No. 2005/0108562 to Khazan *et al.* ("Khazan"). These rejections are hereby respectfully traversed.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a prima facie case of obviousness. In re Fine, 837 F.2d 1071, 1074 (Fed. Cir. 1988). There are four separate factual inquiries to consider in making an obviousness determination: (1) the scope and content of the prior art; (2) the level of ordinary skill in the field of the invention; (3) the differences between the claimed invention and the prior art; and (4) the existence of any objective evidence, or "secondary considerations," of non-obviousness. Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966); see also KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007). An "expansive and flexible approach" should be applied when determining obviousness based on a combination of prior art references. KSR, 127 S. Ct. at 1739. However, a claimed invention combining multiple known elements is not rendered obvious simply because each element was known independently in the prior art. Id. at 1741. Rather, there must still be some "reason that would have prompted" a person of ordinary skill in the art to combine the elements in the specific way that he or she did. Id.; In re Icon Health & Fitness, Inc., 496 F.3d 1374, 1380 (Fed. Cir. 2007). Also,

modification of a prior art reference may be obvious only if there exists a reason that would have prompted a person of ordinary skill to make the change. KSR, 127 S. Ct. at 1740-41.

Regarding claims 7, 8-11, 12-17, and 29-36, these claims are dependent upon independent claim 1. Since claim 1 should be allowable by virtue of its incorporation of allowable subject material as discussed above, claims 7, 8-11, 12-17, and 29-36 should be allowable by virtue of their dependency on claim 1. Accordingly, Applicant respectfully submits that the aforementioned obviousness rejection of claims 7, 8-11, 12-17, and 29-36 is now moot.

In view of the foregoing, Applicant respectfully requests that the aforementioned obviousness rejection of claims 7, 8-11, 12-17, and 29-36 be withdrawn.

IV. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the

present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

Hunton & Williams LLP

By: _____
Thomas E. Anderson
Registration No. 37,063

TEA/vrp

Hunton & Williams LLP
1900 K Street, N.W.
Washington, D.C. 20006-1109
Telephone: (202) 955-1500
Facsimile: (202) 778-2201

Date: 4/22/10